

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

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ATTN: Michael Murphy

As discussed in connection with 2011 AB-650, this draft provides a clear meaning to a statutory provision that has been subject to differing court interpretations. The language in s. 125.07 (1) (a) 3., stats., has created much confusion because s. 125.02 (14m), stats., defines the term “premises” in a way that seems to undermine the apparent intent of s. 125.07 (1) (a) 3., stats. Because premises is defined as “the area described in a license or permit,” s. 125.02 (14m), stats., some circuit courts and courts of appeal (in unpublished decisions) have found that s. 125.07 (1) (a) 3., stats., applies only on licensed premises. However, the issue was flagged by the Wisconsin Supreme Court in *Nichols v. Progressive Northern Insurance Co.*, 2008 WI 20, 308 Wis. 2d 17, in which Chief Justice Abrahamson was troubled enough by the court of appeals’ interpretation of s. 125.07 (1) (a) 3., stats., that she wrote in a concurrence to “express [her] reservations” about the court of appeals’ analysis in its unpublished decision. *Id.* ¶ 54 (Abrahamson, C.J., concurring). The court of appeals gave a literal reading to ss. 125.02 (14m) and 125.07 (1) (a) 3., stats., to conclude that a violation can occur only on a retailer’s licensed premises. The concurrence states that this literal reading leads to a puzzling result and that the term “premises” in s. 125.07 (1) (a) 3., stats., is intended to have its lay meaning of “property,” not its defined meaning of a retailer’s establishment. *Id.* ¶¶ 58, 60 (Abrahamson, C.J., concurring). This concurrence was supported by three votes, with the other four justices declining to address the issue. A recent case suggests that the concurrence in *Nichols* may ultimately become the position of the court. In *Wisconsin Dolls, LLC v. Town of Dell Prairie*, 2012 WI 76, in a unanimous opinion, the court stated: “In determining what ‘premises’ means in Chapter 125, we are expected to look at the context in which the term is used throughout the chapter.” *Id.* ¶ 30. This suggests the court will look beyond the statutory definition in appropriate circumstances.

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